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From:

Sent: Thursday, January 13, 2011 10:05:34 AM

To:

Cc:

Subject: RE: TEFRA Status Inquiry

Your facts are a little unclear since you do not state what year is under audit, when the audit for that year began, for what partnership year the amended return was filed, and when we learned of contrary facts relative to the date the audit began.

The determination of whether the TEFRA procedures apply is generally determined based on the partnership return as of the beginning of the partnership proceeding. See Samuelli v. Commissioner 2009 WL 1397177 (9th Cir. May 18, 2009) (whether small partnership exception applies) and I.R.C. 6231(g)(reliance on partnership return to determine if TEFRA procedures apply if reliance is reasonable). The listing of a disregarded entity as a partner automatically makes the TEFRA partnership procedures apply. Rev. Rul. 2004-88. If TEFRA applies, A TEFRA partnership proceeding is required to determine that a listed partner is not a partner in fact. Historic Boardwalk Hall LLC et al. v. Commissioner; 136 T.C. No. 1; No. 11273-07 (Jan. 3, 2011).

Reliance on the partnership return under section 6231(g) must be "reasonable." This is a factual issue that may depend on what other information we had and when we had it. [REDACTED]